IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2278 OF 1987

Vithal Shankar Dokhe
R/o.Kanadwadi of Nandgaon
Bk., Post:Mundegaon,
Taluka-Igatpuri, Dist:Nasik ....Petitioner

V/s.

1. Bhavdu Sakharam Dokhe
(deceased) through his legal heirs
1) Bhika Bhau Dokhe
(deceased) through his legal heirs
1a) Raghunath Bhika Dokhe
1b) Pandharinath Bhika Dokhe
1c) Ranganath Bhika Dokhe
1d) Harishchandra Bhika Dokhe
1e) Anusaya Runja Burud
1f) Ahilabai Balwant Awarhi
1g) Anandibai Bhika Dokhe

2) Ganpat Bhau Dokhe

3) Smt.Tulsabai Bhau Dokhe
(deceased) through legal heirs
Already on record.

4) Bandu Bhau Dokhe
(deceased) through his
legal heirs
4a) Chandrakant Bandu Dokhe
4b) Vishwas Bandu Dokhe
4c) Sakharam Bandu Dokhe
4d) Shakuntalabai Bandu Dokhe

All R/o. Kanadwadi of Nandgaon
Bk. Post Mundegaon, Tal:Igatpuri,
Dist:Nasik. ....Respondents

Mr.V.Z. Kankaria for Applicant.
Mr.S.S. Kulkarni for Respondent Nos.3A to 3C.

CORAM : V.M. KANADE, J.
DATED :6th/7th SEPTEMBER, 2007.

JUDGMENT:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent No.3A to 3C.

2. By this petition, the Petitioner takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal whereby the Tribunal was pleased to set aside order passed by the Tehsildar and Sub-Divisional Officer and was pleased to declare the Respondents to be deemed purchasers of the suit lands under the Tenancy Act with the further directions directing the Tehsildar to take further action in the matter. As found in the many of the tenancy cases, this case has a chequred history and therefore, it is essential to give a brief background of the dispute

between the parties.

3. Suit land survey No.321/3 admeasuring 73 acres and Survey No.321/6 admeasuring 56.4 acres situated at village Nandgaon Bk. Taluka Igatpuri, Dist:Nasik, originally belonged to Smt. Bakubai Sawaliram Bhoir. She was the landlady. One Bhavdu Sakharam Dokhe was a tenant of the suit lands. Initially, proceedings U/s.32-G of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the said Act) were initiated and were dropped since the landlady was a widow and that she was a disabled person. In view of provisions of Section 31 and Section 32F of the said Act, tenancy proceedings were postponed. On 03/06/1970, the suit lands were gifted away by the landlady through a gift deed to Vithal Shankar Dokhe who is the Petitioner herein. A suit was filed by the Respondents herein in the Civil Court for declaration that the Respondents herein are not tenants to the said land and for other reliefs. Civil Court referred two issues pending in the Court namely (A) whether the defendant proves that he has become a tenant purchaser of the suit land, (b) whether he further proves that he is a tenant of the suit land. After matter was

referred to the Tenancy Court, the Tahsildar answered both these issues in the negative and held that the Respondents are not tenant-purchasers of the said land. Assistant Collector reversed the said findings recorded by the Tenancy Court and held that the Respondents had become tenant-purchasers under the provisions of said Act. A Revision application of the Petitioner herein was also dismissed and the order of the Assistant Collector was confirmed. However, Maharashtra Revenue Tribunal apart from confirming order of the Assistant Collector made following observations:-

> " As it is finally held to-day that opponents are the tenants of the suit lands, they will given an intimation to the landlord and the Tribunal in the prescribed manner as laid down in section 32F(1A) of the Tenancy Act, within one year from to-day in order to enable them to exercise their right of purchase of the suit lands under section 32G of the Tenancy Act".

4. This order was challenged by the Petitioner by filling a Writ Petition in this Court vide Writ Petition No.98/1980. In the Writ Petition, two grounds were raised. Firstly, it was submitted that the Tribunal did not

have jurisdiction to extend scope of reference and Tribunal could not have answered the issues which were referred to it and secondly, it was urged that the Tribunal was not justified in modifying the order which was passed by the Assistant Collector in a manner which was detrimental to the interest of the landlord and more particularly, direction which has been reproduced hereinabove. Learned Single Judge of this Court did not answer first submission which was made by the learned counsel for the Petitioner in the said case. However, it held that it was not necessary to answer on the said issue since the contention which was made by the learned counsel for the Petitioner was accepted and the Court, therefore, set aside the observations which are made by the Maharashtra Revenue Tribunal, which has been reproduced hereinabove. However, this Court at the same time confirmed other observations and findings given by the Maharashtra Revenue Tribunal and held that the Respondents were tenants-purchasers and that they were tenants of the said land. After said order was passed, suit filed by the Petitioner was dismissed by the Trial Court. Therefore, 32-G proceedings were initiated before the Tahsildar, Dist:Nasik. The Tahsildar came to the conclusion that the intimation U/s.32F(I)(a) was not

given and therefore, tenants had failed to exercise rights conferred on them and therefore, held that the purchase of land of tenant had become ineffective purchase. Against this order, an Appeal was preferred by the tenants before Sub-Divisional Officer, Nasik who again confirmed order passed by the Tehsildar. Against this order, the Respondents preferred a revision application before the Maharashtra Revenue Tribunal and finally said Maharashtra Revenue Tribunal allowed the revisional application and set aside order passed by the Tahsildar, Nasik.

5. Mr.Kankaria learned counsel for the Petitioner firstly submitted that this Court in Writ Petition 98/1980 had given finding that no intimation was given by the tenants within one year of demise of the landlady and therefore, that being a position and this being finding being given by the High Court, it was not open for the Maharashtra Revenue Tribunal to have taken contrary view by holding that intimation was deemed to have been given by the tenants. It is not possible to accept this submission. As stated hereinabove, the High Court while deciding the Writ Petition had set aside the observations made by the Maharashtra Revenue Tribunal which were

detrimental to the interest of the landlord and which issue was not canvassed before the Tribunal and lower authorities. It was not open for the Tribunal to have made these observations and in this context the High Court was pleased to allow petition of the Petitioner. It would be appropriate to reproduce exact words used by the learned Single Judge of this Court:-

> "In any event, in my opinion, in an application filed by the landlord it was not permissible to the Court to modify the orders in a way detrimental to the landlord, and with this limited grievance, I set aside that part of the order because I am satisfied that the Tribunal should not have passed such an order in favour of the respondents in a proceeding filed by the landlord which is not in accordance with the procedure, and therefore, the Tribunal has committed substantial error of law in passing partially favourable order in favour of the respondents. Therefore, the order to that extent containing directions will have to be set aside and the rest of the order will have to be retained."

6. Submissions made by Mr. Kankaria, the learned counsel for the Petitioner that finding given by the High Court that no intimation was given

within one year, cannot be accepted, in view of observations made by the High Court while deciding said petition. He further submitted that by order dated 15/07/1985, proceedings U/s.22B had commenced and had concluded in favour of the Petitioner and said order had become final and that the said order was not challenged by the tenant. He submitted xerox copy of said order dated 15/07/1985.

7. It is not possible to accept this submission made by the Petitioner. In first place, the Petition has not been amended. It is not possible to accept any document which is tendered across the bar at the final hearing of the matter which was filed in the year 1987. Order on which reliance is placed by the counsel for the Petitioner is dated 15/07/1985. The Petitioner either could have annexed copy of this order alongwith this petition or if so advised, could have made application for amendment of petition to annex copy of this order to the Petition. The Petitioner not having taken recourse to the said procedure, it will not be possible to accept the document which is tendered across the bar by the learned counsel for the Petitioner. Even otherwise, after having gone

through the said order, it appears that the proceedings U/s.32P were initiated by the Tahsildar. In my view, even said order will not be of any assistance to the Petitioner since the Maharashtra Revenue Tribunal has set aside order of the Tahsildar and therefore, to that extent said order, in my humble opinion, has become non-est. Proceedings U/s.32P could have been initiated only if order had been passed by the competent authority holding that purchase of the tenants had become ineffective. No such order was passed by any authority. The Tehsildar suo motu proceeded to decide the case U/s.32-P. Therefore, in my view, said order is void and non-est. Therefore, even otherwise, said order will not be of any assistance to the learned counsel for the Petitioner.

8. Learned counsel for the Petitioner further submitted that provisions of Section 32F(I)(a) were mandatory and that the Maharashtra Revenue Tribunal had erred in observing that the provisions U/s. 32F(I)(a) are not mandatory. He invited my attention to the following observation:-

> "It was held by the Hon'ble High Court of Bombay that the provisions under sec.32-F(IA) of the Tenancy Act are not mandatory and the previous proceedings under the

Tenancy Act between the same parties being landlords and tenants are sufficient to give notice to the landlord of the intention of the tenants to purchase the lands."

9. Learned counsel for the Petitioner submitted that the said observation was patently illegal. He submitted that Division Bench of this Court had held that provisions of Section 32F are mandatory. He relied on the judgment of Division Bench of this Court in the case of **Bapu Dnyanu Patil V/s. Sadashiv Ramchandra Joshi reorted in 1969 Mh.L.J.790** He invited my attention to para 14 and 16 of the said judgment in support of said submissions. He also relied on the judgment of the learned Single Judge of this Court in the case of **Maruti Narayan Chavan & Ors. V/s. Shri. Ramchandra Bhau Sutar & Ors. reported in 1999(4) ALL MR 409** in support of his submission. Said submission also cannot be accepted. There cannot be any doubt about the ratio of the Division Bench of this Court holding therein that the provisions of Section 32F(2) are mandatory. However, observations which are made by the Maharashtra Revenue Tribunal cannot be read in isolation while construing impugned order which has to be read as a whole and it is not possible to refer to stray

observations which are made. The Maharashtra Revenue Tribunal before making these observations has noted fact situation in the present case and after considering facts in this case has given finding that the requirement U/s.32F(I)(a) have been complied with by the tenants. Maharashtra Revenue Tribunal has given finding of fact that the provisions had been complied with after referring to the fact situation of the present case. The observations which are quoted hereinabove, therefore, do not assume any significance. The Maharashtra Revenue Tribunal has observed that when the proceedings U/s.32-G were dropped in the year 1968 at that time tenants had already declared their intention to purchase the suit lands even when the landlady was alive. However, it was noted that tenants had paid the purchase price on 18/01/1971 pursuant to order of Additional Tahsildar and A.L.T. This purchase price has been paid within six months from the date on which land was gifted by the landlady to the present Petitioner and therefore, within period of six months from the date on which landlady ceases to have any interest in the land i.e. on 3rd June, 1970. Purchase price has been paid pursuant order 18/01/1971 passed by the Additional Tahsildar and A.L.T. That being a position, factually the

Maharashtra Revenue Tribunal has recorded finding that intimation was, in fact, given in the prescribed form to the concerned person namely landlady by the Petitioner herein. Therefore, it will not be possible to accept the submissions made by the learned counsel for the Petitioner. Facts and circumstances were different in the case of **Maruti Narayan Chavan (Supra)** on which reliance is placed by the learned counsel for the Petitioner and in the said case some instalments have been paid. However, proceedings have not concluded by that time and under these circumstances, the learned Single Judge has made these observations which are found in para 22 in the said judgment. In the said case after proceedings were initiated U/s.32G, that order was set aside by the SDO in the appeal and the matter was remanded for fresh inquiry in respect of the two points referred to above and therefore, in that context the Single Judge has observed that even if the tenant had initiated proceedings under section 32G and even if he had paid some instalments and the price of the land, the same cannot be considered as substantial compliance resulting in dispensation of the mandatory requirement of section 32F. In the present case, facts are different. Therefore, this ratio will not apply to the present

case.

10. The learned counsel for the Petitioner further relied on the judgment of Single Judge of this Court in the case of **Rangrao Nivritti Lad & Ors. V/s. Vishnu Joti Thorbole and Anr. reported in 2001(I)Mh.L.J. 647** wherein learned Single Judge of this Court has held that on failure to give intimation of willingness to purchase the land as required under section 32F(I-A), tenant loses his right to be in the land and becomes liable to be evicted from land under section 32P. The said ratio will not apply to the present case. Under these circumstances, there is no merit in the submissions of the learned counsel for the Petitioner. The Maharashtra Revenue Tribunal has relied on two judgments of this Court in the case of **Shrikrishna Subhana Horambale V/s. Shripad Jiwaji Apate A.I.R. 1986 Bombay page 86 and Nago Dattu Mahajan V/s. Yeshodabai Huna Mahajan reported in 78 Bombay Law Reported, 427.** Both these judgment still hold the field and they are not overruled and on the basis of said judgments and facts of the present case, the Maharashtra Revenue Tribunal has allowed the appeal. Therefore, there is no reason to interfere

with the order of the Maharashtra Revenue Tribunal while exercising writ jurisdiction of this Court under Article 227 of Constitution of India. The Bombay Tenancy and Agricultural Lands Act, 1948 is a beneficial piece of legislation which intends to give land to the actual tiller. Section 32F contemplates disabilities on the part of landlord which is covered under the provisions of Section 32F(a) where as disabilities of the tenant have also been taken into consideration under the provisions of Section 32F(I)(b) of the said Act. Writ Petition is dismissed. Rule is discharged.

11. Learned counsel for the Petitioner at this stage seeks continuation of stay of this Court' sorder and continuation of interim relief passed by this Court, for a period of ten weeks. This request is declined as stated hereinabove. Matter is pending since last more than 50 years and therefore, in my view, it is not a fit case for continuation of interim relief passed by this Court.

. Writ Petition is dismissed and disposed of accordingly.

V.M. KANADE, J.